

FILED

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ROBERT L. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY BS. DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

MARK ROY COLLINS,)
Plaintiff,)
vs.) No. CIV-05-585-W
STATE OF OKLAHOMA et al.,)
Defendants.)

ORDER

On January 31, 2006, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this matter and recommended, after preliminary screening, that this matter should be dismissed as to all defendants. Plaintiff Mark Roy Collins was advised of his right to object, but no objections to the Report and Recommendation were filed within the allotted time.

Upon de novo review of the record, the Court concurs with Magistrate Judge Bacharach's suggested disposition of this matter. Collins was convicted in the District Court for Comanche County, Oklahoma, of inter alia one count of sexual battery and/or rape first degree by force. He filed the instant lawsuit seeking relief under title 42, section 1983 of the United States Code and alleged that the defendants deprived him of various constitutional rights. He prayed to have his conviction "overturned" and "vacated."

Defendant State of Oklahoma is immune from suit under the eleventh amendment to the United States Constitution. It is therefore entitled to dismissal without prejudice of all claims asserted against it.

Because Collins has sought as a remedy vacatur of his state court conviction, relief under section 1983 is unavailable. Thus, dismissal of all claims against the remaining defendants, William C. Riley and Darrell Dawkins, is likewise warranted.

Based upon the foregoing, the Court

- (1) ADOPTS the Report and Recommendation issued on January 31, 2006;
- (2) for the reasons stated by Magistrate Judge Bacharach, DECLINES to recharacterize this action as an action seeking relief under title 28 U.S.C. § 2254;
- (3) GRANTS the Motion to Dismiss filed on October 24, 2005, by the State of Oklahoma and Riley;
- (4) deems MOOT the Motion to Dismiss filed on February 21, 2006, by Dawkins and the City of Lawton, to the extent, this movant is a party defendant; and
- (5) DISMISSES without prejudice all claims asserted in Collins' complaint against all defendants.

ENTERED this 24th day of February, 2006.



LEE R. WEST
UNITED STATES DISTRICT JUDGE